

Amendment and Response
Applicants: Robert A. MacDonald et al.
Serial No.: 09/904,038

Attorney Docket: KEY1025US

REMARKS

Claims 1 to 37 are pending.

Claim 29 has been amended above. The amendments to the claims add no new matter. Support for the amendments to claim 29 may be found generally throughout the specification.

For the convenience of the Examiner, Applicants' remarks herein are set forth under appropriate subheadings.

Claim rejections under 35 U.S.C. § 112

The Examiner rejected claims 29 to 32 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 has been amended above to provide proper antecedent basis to "first and second" blocks. Claims 30 to 32 depend from claim 29.

Accordingly, Applicants respectfully request that the rejection of claims 29 to 32 under 35 U.S.C. § 112, second paragraph be withdrawn.

Claim rejections under 35 U.S.C. § 102

The Examiner rejected claim 13 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,816,749 (Bailey).

Applicants respectfully traverse this rejection of claim 13.

Bailey does not teach or suggest a block which can be oriented in the manner described by claim 13.

Bailey teaches and describes a modular wall block having downwardly facing grooves and upwardly extending projections. This wall block is shown as having a front face that forms the front face of a wall. A preferred embodiment of Bailey's block is shown wherein the top of the block is provided with a recess so

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that reinforcing grid-like sheet material can be used with the blocks in the construction of a wall. Such blocks can be used in only one orientation, that is, with the front face of the block forming the front face of a wall. In addition, all blocks illustrated by Bailey have a shaped front face, which results in an attractive appearance for a wall. No where does Bailey suggest that the block can be used in an orientation other than that shown, i.e., where the front of the blocks forms the front surface of the wall.

The present claim 13 recites that "the block body is configured for construction of a wall having a front surface of the wall formed of the first faces of a portion of the multiple wall blocks and the second faces of others of the multiple wall blocks".

A proper rejection under 35 U.S.C. § 102 requires that the reference recite each element of the claimed invention. This reference does not meet that requirement.

Accordingly, Applicants respectfully request that the rejection of claim 13 under 35 U.S.C. § 102(b) be withdrawn.

The Examiner rejected claim 13 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,984,589 (Ciccarello).

Applicants respectfully traverse this rejection of the claims.

Ciccarello teaches and describes a block having upwardly facing grooves and pin receiving channels on the sides of the blocks.

The present invention, as recited in claim 13, requires first and second channels on the lower surface of the block, and further has a block body configured for construction of a wall having a front surface of the wall formed of the first faces of a portion of the multiple wall blocks and the second faces of others of the multiple wall blocks.

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A proper rejection under 35 U.S.C. § 102 requires that the reference recite each element of the claimed invention. This reference does not meet that requirement.

Accordingly, Applicants respectfully request that the rejection of claim 13 under 35 U.S.C. § 102(b) be withdrawn.

Claim rejections under 35 U.S.C. § 103

The Examiner rejected claims 1 to 4, 7, 9 to 15, and 33 to 37 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,595,460 (Miller), U.S. Patent No. 5,816,749 (Bailey), and U.S. Patent No. 3,418,774 (Kocher et al.).

Applicants respectfully traverse this rejection of the claims.

Miller describes a modular wall block for use with a connector so that geogrid reinforcement material may be used with the blocks in the construction of a wall. Miller does show a single groove in the top surface of the block. The back surface of Miller's block is of a compound shape and is not amenable to use in an orientation other than that shown; in any event, there is no suggestion of this in Miller.

Bailey, as discussed above, does not show or describe a block which is used in more than one orientation. That is, the front surface of a wall is formed from the front faces of Bailey's blocks. Bailey teaches a positive interlocking system in which upwardly extending projections engage downwardly facing grooves. All blocks illustrated by Bailey have a shaped front face, which results in an attractive appearance for a wall. In addition, Bailey's blocks can be provided with a recess for the use with reinforcement material. Such blocks can be used in one orientation only. No where does Bailey suggest that the block can be used in any orientation other than that shown.

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Kocher et al. teach a block having diagonal struts in which either the "front" or the "back" surface of the block can be used to form a front surface of a wall. Various wall textures can be produced by varying the placement of these blocks. Kocher et al.'s blocks can be used in different orientations, but neither the shape nor function of these blocks have anything in common with the wall block, wall, or method of constructing a wall of the present invention.

There is no reason to combine these three references, as there is no suggestion in these references, alone or together, that leads one to combine these teachings to produce the block of the present claimed invention. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive to support the combination.

Claims 1 (and its dependent claims 2 to 4, 7 and 9 to 12) 13, and 14 require that a block have first and second channels on the lower surface and that the blocks are positioned so that the front surface of a wall is formed from the first and second faces of the block. Claim 15 is directed to a wall system in which the lower surface of each block has first and second channels, and one channel receives a pin from the block below and the second channel receives a geogrid connector. Claims 33 and 34 are directed to a retaining wall and method, respectively, in which the lower surface of each block has first and second channels and the upper surface has at least one pin receiving aperture, and there is a pin having a body portion and a head portion, wherein the head portion is engaged in one of the first and second channels. Claims 35, 36, and 37 are directed to a wall block, a wall, and a method of constructing a wall, respectively, in which the blocks are connected by pins. The blocks have first and second channels on the lower surface of the block. One of the channels functions as a pin

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receiving cavity depending upon the orientation of the block; i.e., where the first face or the second face of the block forms the front surface of the wall.

None of the cited references, taken alone or together, suggests or describes the combination of elements recited in the above claims.

Accordingly, Applicants respectfully request that the rejection of claims 1 to 4, 7, 9 to 15, and 33 to 37 under 35 U.S.C. § 103(a) be withdrawn.

The Examiner rejected claims 1 to 14, 16 to 33, and 35 to 37 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,149,352 (MacDonald) in view of U.S. Patent No. 6,280,121 (Khamis).

Applicants respectfully traverse this rejection of the claims.

MacDonald describes a block system comprising blocks of various sizes having a channel on the lower surface. The channel provides a means for a positive connection system when a pin is used. The head of a pin in a block on a first course fits in the channel in a block on an upper course. Multiple pin holes in MacDonald's blocks permit variation in set-back when a wall is constructed. The blocks can be used in various orientations. There is no suggestion of a reason to place more than one channel on the lower surface of the block.

Khamis teaches a block system designed for use with reinforcing material. Khamis' blocks are designed with tongue and groove sections (44 and 46 in FIGS. 3 and 4) so that the blocks can fit "...snugly together, row upon row, to thereby prevent any shifting of blocks with respect to each other." (Column 7, lines 22 to 23) Moreover, Khamis' block system does not suggest blocks designed to form a wall that has a decorative appearance. Instead, this block system may include decorative coverings adhered to the front faces of the blocks (Column 8, lines 1 to 12). Applicants submit that Khamis' block is fundamentally different from the present invention.

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Thus there is no reason to combine MacDonald and Khamis as there is no teaching in either reference of the wall, blocks, or method of the present invention.

Accordingly, Applicants respectfully request that the rejection of claims 1 to 14, 16 to 33, and 35 to 37 under 35 U.S.C. § 103(a) be withdrawn.

The Examiner rejected claims 36 and 37 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,528,873 (Scales).

Applicants respectfully traverse this rejection of the claims.

Scales is another example of a block having one orientation. That is, the front face of Scales' block forms the front face of a wall when it is constructed. There is no suggestion or teaching in Scales of using the front and back surfaces interchangeably. Scales illustrates a block having a roughened, or decorative, front face. Scales' blocks have first and second channels on both the top and bottom surfaces of the block, so that a connector (see element 20 or 40 in FIG. 5A, for example) can fit into the top channel of one block and the bottom channel of another block in a stack of blocks. These connects are designed to prevent transverse displacement of rows of blocks (Column 3, line 18).

By contrast, claims 36 and 37 are directed to a wall and a method of constructing a wall, respectively, in which the blocks are connected by pins. The blocks have first and second channels on the lower surface of the block. One of the channels functions as a pin receiving cavity depending upon the orientation of the block; i.e., where the first face or the second face of the block forms the front surface of the wall.

Accordingly, Applicants respectfully request that the rejection of claims 36 and 37 under 35 U.S.C. § 103(a) be withdrawn.

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In view of Applicants' remarks, the claims are believed to be in condition for allowance. Reconsideration, withdrawal of the rejections, and passage of the case to issue is respectfully requested.

If any additional fees are due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 16-2312. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our deposit account.

Respectfully submitted,

Date: 7/24/03

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